THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 20th day of April,2007

W.P.No.18973 of 2000

Between:-

D. Dorai Swamy … Petitioner

and

The Andhra Pradesh State
Road Transport Corporation
(APSRTC) represented by its
Managing Director, Hyderabad
and others … Respondents

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W.P.No.18973 of 2000

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus directing the respondents to pay the arrears of salary to the petitioner from 1-12-1992 to 6-6-1999 and all the benefits accruing to him and also his pension from 6-6-1999 onwards.

It appears, petitioner was initially appointed as a Driver in the transport wing of Tirumala Tirupathi Devasthanams with effect from 25-12-1971. The transport wing of Tirumala Tirupathi Devasthanams was taken over by Andhra Pradesh State Road Transport Corporation under an agreement between the two organizations with effect from 8-8-1975. Petitioner did not opt to be governed by the service conditions of APSRTC. He opted to remain to be governed by the service conditions of Tirumala Tirupathi Devasthanams. While that being so, on 6-12-1992, the petitioner was declared medically unfit due to defective eye vision. But, he was not provided with any alternative employment. Therefore, he filed a Writ Petition in W.P.No.2053 of 1993 before this Court seeking to declare the action of the respondents in not implementing Clause (13) of the agreement between APSRTC and Tirumala Tirupathi Devasthanams dated 8-8-1975 regarding the continuance of service under the Rules and Regulations of the absorbed employees and issuing the orders of compulsory retirement of the petitioner as arbitrary and illegal. The

said Writ Petition was disposed of on 12-6-1997 directing the respondent-Corporation to provide alternative employment to the petitioner and entrust the duties of booking clerk, announcer, traffic controller etc., within three months from the date of the Order and as far as the emoluments are concerned, it was made clear that the same may be payable in the scale of post of Driver. However, this order was not given effect to and a communication was sent on 10-9-1997 by the 3rd respondent informing the petitioner that he was placed at Serial No.12 in the Regional seniority list of medically unfit drivers and seeking alternative employment. In fact, even before the said communication was sent, the petitioner attained the age of superannuation on 30-6-1997.

It is the case of the petitioner that he was entitled for reinstatement immediately to any alternative post as suggested by this Court. Neither the Judgment of this Court in W.P.No.2053 of 1993 was implemented nor he was paid any salary in lieu of reinstatement; on the other hand, a communication dated 10-9-1997 was sent to him without verifying the facts properly.

On behalf of the respondents, a detailed counter affidavit has been filed denying the allegations made by the petitioner. It is asserted that the petitioner did not opt to be governed by the Service Regulations of APSRTC. Further, it is stated that the Judgment of this Court in Writ Petition No.2053 of 1993, dated 12-6-1997 was in ignorance of the earlier directives of this Court in Writ Petition Nos.18172 and 18175 of 1993 and also Writ Appeal Nos.138 and 139 of 1995. The seniority list was prepared in accordance with the directives issued in the said Judgment and the provisions of Regulation 6-A of Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations,1964. Therefore, the Judgment

rendered in Writ Petition No.2053 of 1993 is *per incuriam* and liable to be recalled and reviewed. Petitioner is neither entitled for any alternative employment nor for any emoluments during the period from 6-12-1992 to 30-6-1997. The Writ Petition is devoid of merits and is liable to be dismissed.

Heard both sides.

At the outset, I am of the opinion that the Corporation has taken inconsistent stand as to governance of the service conditions of the petitioner. Having said that the petitioner never opted to be governed by the service conditions of APSRTC, the respondents have relied upon, at paragraph-11 of the counter, the judgment rendered by this Court and the policy under Regulation-6 of APSRTC Employees (Service) Regulations,1964. Neither the Regulations nor the Judgments rendered by this Court are applicable in the case of the petitioner. Petitioner was entitled for reinstatement into service as per the Judgment of this Court dated 12-6-1997 in Writ Petition No.2053 of 1993. Respondents have simply brushed aside the claim of the petitioner and a communication dated 10-9-1997 was issued stating that the petitioner was placed at Sl.No.12 in the list, which is again unwarranted. I am of the considered opinion that the petitioner is governed by the service regulations as are applicable to the employees of Tirumala Tirupathi Devasthanams, since on taking over of the transport wing of Tirumala Tirupathi Devasthanams by APSRTC, he never opted to be governed by the service conditions of APSRTC and he opted to remain to be governed by the service conditions of Tirumala Tirupathi Devasthanams. Since the petitioner is not provided with any alternative employment nor paid emoluments, respondents are directed to pay him the salary and other allowances applicable to the post of Driver from 6-12-1992 till 30-6-1997 and all

other retiral benefits as were applicable to the employees of Tirumala Tirupathi Devasthanams.

With the above directions, the Writ Petition is disposed of. No order as to costs.

20-4-2007

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